

CHAPTER 194

CHILDREN AND DOMESTIC MATTERS

HOUSE BILL 05-1174

BY REPRESENTATIVE(S) Stafford, Lundberg, Welker, Berens, Boyd, Frangas, Green, Harvey, Jahn, Riesberg, Sullivan, Todd, Coleman, Garcia, and Stengel.
also SENATOR(S) Grossman and Williams.

AN ACT**CONCERNING CHILD PLACEMENT IN DEPENDENCY OR NEGLECT ACTIONS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly hereby finds:

(a) That more than seven thousand children in Colorado reside in foster care. Approximately twenty percent of these children are five years of age or younger. The status of the physical, emotional, and mental development of children at the time they become involved in the state's human services system is varied but consistent in terms of need.

(b) The American Academy of Pediatrics has found that emotional and cognitive disruptions in the early lives of children have the potential to impair brain development. Paramount in the lives of children in foster care is their need for continuity with their primary attachment figures and a sense of permanence that is enhanced when the child's placement is stable.

(c) The American Academy of Pediatrics has found that attachment to a primary caregiver is essential to the development of emotional security and social conscience.

(d) According to the American Academy of Pediatrics, optimal child development occurs when a spectrum of needs are consistently met over an extended period. Separation of a child from his or her primary caregiver occurring between six months and three years of age is more likely to result in subsequent emotional disturbances for the child than if the separation occurs when the child is older. Repeated moves from home to home compound the adverse consequences of separation. Further, the younger the child and the more extended the period of uncertainty or separation, the

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

more detrimental the separation will be to the child's well-being. Any intervention that separates a child from the child's primary caregiver or person who provides psychological support to the child should be cautiously considered and treated as a matter of urgency and profound importance.

(2) The general assembly further finds that older children in foster care are at a high risk of long-term mental health issues, dropping out of school, alcohol and drug dependence, promiscuity, and interaction with the criminal justice system. Multiple moves for older children lead to disruption in schooling and meaningful relationships and attachments, including relationships with peers and family of origin. As a result, these children have few, if any, long-term connections when they leave foster care, resulting in little support for their growth into independent adults.

(3) The general assembly therefore declares that multiple moves for children in the dependency and neglect system should be discouraged in favor of permanent planning upon which these children can rely for their healthy mental, physical, and emotional development.

SECTION 2. 19-3-403 (3.6), Colorado Revised Statutes, is amended to read:

19-3-403. Temporary custody - hearing - time limits - restriction.

(3.6) (a) (I) THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL PREPARE A FORM AFFIDAVIT AND ADVISEMENT. THE FORM AFFIDAVIT AND ADVISEMENT SHALL BE AVAILABLE AT EACH JUDICIAL DISTRICT TO EACH PARENT ATTENDING A TEMPORARY CUSTODY HEARING. THE FORM AFFIDAVIT AND ADVISEMENT SHALL:

(A) ADVISE THE PARENT THAT HE OR SHE IS REQUIRED TO PROVIDE THE REQUESTED INFORMATION FULLY AND COMPLETELY UNDER PENALTIES OF PERJURY AND CONTEMPT OF COURT;

(B) REQUIRE THE PARENT TO LIST THE NAMES, ADDRESSES, AND TELEPHONE NUMBERS OF, AND ANY COMMENTS CONCERNING THE APPROPRIATENESS OF THE CHILD'S POTENTIAL PLACEMENT WITH, EVERY GRANDPARENT, AUNT, UNCLE, BROTHER, SISTER, HALF-SIBLING, AND FIRST COUSIN OF THE CHILD;

(C) PROVIDE A SECTION IN WHICH THE PARENT MAY LIST THE NAMES, ADDRESSES, TELEPHONE NUMBERS OF, AND ANY COMMENTS CONCERNING THE APPROPRIATENESS OF THE CHILD'S POTENTIAL PLACEMENT WITH, OTHER RELATIVES AND KIN WHO HAVE A SIGNIFICANT RELATIONSHIP WITH THE CHILD;

(D) ADVISE THE PARENT THAT FAILURE TO IDENTIFY THESE RELATIVES IN A TIMELY MANNER MAY RESULT IN THE CHILD BEING PLACED PERMANENTLY OUTSIDE OF THE HOME OF THE CHILD'S RELATIVES, IF THE CHILD CANNOT BE SAFELY RETURNED TO THE HOME OF THE CHILD'S PARENTS;

(E) ADVISE THE PARENT THAT THE CHILD MAY RISK LIFE-LONG DAMAGE TO HIS OR HER EMOTIONAL WELL-BEING IF THE CHILD BECOMES ATTACHED TO ONE CAREGIVER AND IS LATER REMOVED FROM THE CAREGIVER'S HOME;

(F) REQUIRE THE PARENT TO ACKNOWLEDGE THAT HE OR SHE UNDERSTANDS THE ADVISEMENTS CONTAINED IN THE FORM; AND

(G) REQUIRE THE PARENT TO SIGN AND DATE THE FORM.

(II) At the hearing, information may be supplied to the court in the form of written or oral reports, affidavits, testimony, or other relevant information that the court may wish to receive. Any information having probative value may be received by the court, regardless of its admissibility under the Colorado rules of evidence.

(III) The court shall advise the parents of the child that the child may be placed with ~~the child's grandparent, aunt, uncle, brother, or sister~~ A RELATIVE if, in the court's opinion, such placement is appropriate and in the child's best interests. The court shall order the parents to ~~provide within fifteen days after the hearing the names, addresses, and telephone numbers, if known, of any relatives~~ COMPLETE THE FORM AFFIDAVIT AND ADVISEMENT DESCRIBED IN SUBPARAGRAPH (I) OF THIS PARAGRAPH (a) NO LATER THAN FIFTEEN DAYS AFTER THE DATE OF THE HEARING OR PRIOR TO THE NEXT HEARING ON THE MATTER, WHICHEVER OCCURS FIRST. THE ORIGINAL COMPLETED FORM SHALL BE FILED WITH THE COURT. THE COUNTY DEPARTMENT OF SOCIAL SERVICES, EACH PARENT, THE GUARDIAN AD LITEM, AND COUNSEL FOR EACH PARENT, IF ANY, SHALL RECEIVE COPIES OF THE COMPLETED FORM. THE COURT MAY ADVISE EACH PARENT OF THE PENALTIES ASSOCIATED WITH PERJURY AND CONTEMPT OF COURT, IF NECESSARY. THE COURT SHALL ORDER EACH PARENT TO NOTIFY EVERY RELATIVE WHO MAY BE AN APPROPRIATE RELATIVE FOR THE CHILD THAT FAILURE TO COME FORWARD IN A TIMELY MANNER MAY RESULT IN THE CHILD BEING PLACED PERMANENTLY OUTSIDE OF THE HOME OF THE CHILD'S RELATIVES, IF THE CHILD IS NOT ABLE TO RETURN TO THE CHILD'S HOME. IN ADDITION, THE COURT SHALL ADVISE EACH PARENT THAT FAILURE TO IDENTIFY THESE RELATIVES IN A TIMELY MANNER MAY RESULT IN THE CHILD BEING PLACED PERMANENTLY OUTSIDE OF THE HOME OF THE CHILD'S RELATIVES.

(IV) The court may order a county department of social services to make reasonable and timely efforts to contact ~~such~~ APPROPRIATE identified relatives within ninety days after the hearing TO INFORM THEM about placement possibilities for the child, unless the court determines there is good cause not to ~~notify~~ CONTACT or good cause to delay ~~the notification of such~~ CONTACTING THE CHILD'S relatives. THE COUNTY DEPARTMENT SHALL ADVISE EACH APPROPRIATE IDENTIFIED RELATIVE THAT THE POSSIBILITY FOR PLACEMENT OF THE CHILD IN HIS OR HER HOME MAY TERMINATE AT A FUTURE DATE; REQUEST EACH SUCH RELATIVE WHO IS INTERESTED IN BECOMING A PLACEMENT OPTION FOR THE CHILD TO COME FORWARD AT THE EARLIEST POSSIBLE TIME TO SEEK PLACEMENT OF THE CHILD IN HIS OR HER HOME AND TO COOPERATE WITH THE COUNTY DEPARTMENT OF SOCIAL SERVICES TO EXPEDITE PROCEDURES PERTAINING TO THE PLACEMENT OF THE CHILD IN HIS OR HER HOME, IF THE CHILD CANNOT BE SAFELY RETURNED TO THE HOME OF THE CHILD'S PARENTS.

(V) The court may consider and give preference to giving temporary custody to ~~the child's grandparent or such other~~ A CHILD'S relative who is appropriate, capable, willing, and available for care if IT IS in the best interests of the child and if the court finds that there is no suitable birth or adoptive parent available, with due diligence having been exercised in attempting to locate any such birth or adoptive parent. The court may place or continue custody with the county department of social services if the court is satisfied from the information presented at the hearing that such custody is appropriate and in the child's best interests, or the court may enter such other orders as are appropriate. THE COURT MAY AUTHORIZE THE COUNTY DEPARTMENT OF

SOCIAL SERVICES WITH CUSTODY OF A CHILD TO PLACE THE CHILD WITH A RELATIVE WITHOUT THE NECESSITY FOR A HEARING IF A COUNTY DEPARTMENT LOCATES AN APPROPRIATE, CAPABLE, AND WILLING RELATIVE WHO IS AVAILABLE TO CARE FOR THE CHILD AND THE GUARDIAN AD LITEM OF THE CHILD CONCURS THAT THE PLACEMENT IS IN THE BEST INTERESTS OF THE CHILD. IF THE COUNTY DEPARTMENT OF SOCIAL SERVICES PLACES A CHILD WITH A RELATIVE WITHOUT A HEARING PURSUANT TO THE PROVISIONS OF THIS SUBPARAGRAPH (V), THE COUNTY DEPARTMENT SHALL FULLY INFORM THE COURT OF THE DETAILS CONCERNING THE CHILD'S PLACEMENT ON THE RECORD AT THE NEXT HEARING. If the court enters an order removing a child from the home or continuing a child in a placement out of the home, the court shall make the findings required pursuant to section 19-1-115 (6), if such findings are warranted by the evidence.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (3.6) to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

SECTION 3. 19-3-605, Colorado Revised Statutes, is amended to read:

19-3-605. Request for placement with family members. (1) Following an order of termination of the parent-child legal relationship, the court shall consider, but shall not be bound by, a request that guardianship and legal custody of the child be placed in WITH a ~~grandparent, aunt, uncle, brother, or sister~~; RELATIVE of the child. When ordering guardianship of the person and legal custody of the child, the court ~~shall~~ MAY give preference to a grandparent, aunt, uncle, brother, ~~or~~ sister, HALF-SIBLING, OR FIRST COUSIN of the child when such relative has made a TIMELY request therefor and the court determines that such placement is in the best interests of the child. Such request must be submitted to the court prior to commencement of the hearing on the petition seeking termination of the parent-child legal relationship. Nothing in this section shall be construed to require the child placement agency with physical custody of the child to notify said relatives described in this section of the pending termination of parental rights.

(2) Notwithstanding the provisions of subsection (1) of this section to the contrary, when the child is part of a sibling group and the sibling group is being placed out of the home, if the county department locates an appropriate, capable, willing, and available joint placement for all of the children in the sibling group, the court shall presume that placement of the entire sibling group in the joint placement is in the best interests of the children. Such presumption may be rebutted by a preponderance of the evidence that placement of the entire sibling group in the joint placement is not in the best interests of a child or of the children.

(3) IN MAKING PLACEMENT DETERMINATIONS CONCERNING A CHILD FOLLOWING THE ORDER OF TERMINATION OF THE PARENT-CHILD LEGAL RELATIONSHIP PURSUANT TO THE PROVISIONS OF THIS SECTION, THE COURT MAY CONSIDER ALL PERTINENT INFORMATION RELATED TO MODIFYING THE PLACEMENT OF THE CHILD PRIOR TO

REMOVING THE CHILD FROM HIS OR HER PLACEMENT, GIVING STRONG CONSIDERATION TO THE FOLLOWING:

(a) AN INDIVIDUALIZED ASSESSMENT OF THE CHILD'S NEEDS CREATED PURSUANT TO TITLE IV-E OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER, AS AMENDED;

(b) WHETHER THE CHILD'S PLACEMENT AT THE TIME OF THE HEARING IS A SAFE AND POTENTIALLY PERMANENT PLACEMENT FOR THE CHILD;

(c) THE CHILD'S ACTUAL AGE AND DEVELOPMENTAL STAGE AND, IN CONSIDERATION OF THIS INFORMATION, THE CHILD'S ATTACHMENT NEEDS;

(d) WHETHER THE CHILD HAS SIGNIFICANT PSYCHOLOGICAL TIES TO A PERSON WHO COULD PROVIDE A PERMANENT PLACEMENT FOR THE CHILD, INCLUDING A RELATIVE, AND, IF SO, WHETHER THIS PERSON MAINTAINED CONTACT WITH THE CHILD DURING THE CHILD'S PLACEMENT OUT OF THE HOME;

(e) WHETHER A PERSON WHO COULD PROVIDE A PERMANENT PLACEMENT FOR THE CHILD IS WILLING TO MAINTAIN APPROPRIATE CONTACT AFTER AN ADOPTION OF THE CHILD WITH THE CHILD'S RELATIVES, PARTICULARLY SIBLING RELATIVES, WHEN SUCH CONTACT IS SAFE, REASONABLE, AND APPROPRIATE;

(f) WHETHER A PERSON WHO COULD PROVIDE A PERMANENT PLACEMENT FOR THE CHILD IS AWARE OF THE CHILD'S CULTURE AND WILLING TO PROVIDE THE CHILD WITH POSITIVE TIES TO HIS OR HER CULTURE;

(g) THE CHILD'S MEDICAL, PHYSICAL, EMOTIONAL, OR OTHER SPECIFIC NEEDS, AND WHETHER A PERSON WHO COULD PROVIDE A PERMANENT PLACEMENT FOR THE CHILD IS ABLE TO MEET THE CHILD'S NEEDS; AND

(h) THE CHILD'S ATTACHMENT TO THE CHILD'S CAREGIVER AT THE TIME OF THE HEARING AND THE POSSIBLE EFFECTS ON THE CHILD'S EMOTIONAL WELL-BEING IF THE CHILD IS REMOVED FROM THE CAREGIVER'S HOME.

SECTION 4. 19-3-702, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

19-3-702. Permanency hearing - periodic reviews. (9) IN MAKING PLACEMENT DETERMINATIONS CONCERNING A CHILD PURSUANT TO THE PROVISIONS OF THIS SECTION, THE COURT MAY CONSIDER ALL PERTINENT INFORMATION RELATED TO MODIFYING THE PLACEMENT OF THE CHILD PRIOR TO REMOVING THE CHILD FROM HIS OR HER PLACEMENT, GIVING STRONG CONSIDERATION TO THE FOLLOWING:

(a) AN INDIVIDUALIZED ASSESSMENT OF THE CHILD'S NEEDS CREATED PURSUANT TO TITLE IV-E OF THE FEDERAL "SOCIAL SECURITY ACT", AS AMENDED, AND REGULATIONS PROMULGATED THEREUNDER, AS AMENDED;

(b) WHETHER THE CHILD'S PLACEMENT AT THE TIME OF THE HEARING IS A SAFE AND POTENTIALLY PERMANENT PLACEMENT FOR THE CHILD;

(c) THE CHILD'S ACTUAL AGE AND DEVELOPMENTAL STAGE AND, IN CONSIDERATION OF THIS INFORMATION, THE CHILD'S ATTACHMENT NEEDS;

(d) WHETHER THE CHILD HAS SIGNIFICANT PSYCHOLOGICAL TIES TO A PERSON WHO COULD PROVIDE A PERMANENT PLACEMENT FOR THE CHILD, INCLUDING A RELATIVE, AND, IF SO, WHETHER THIS PERSON MAINTAINED CONTACT WITH THE CHILD DURING THE CHILD'S PLACEMENT OUT OF THE HOME;

(e) WHETHER A PERSON WHO COULD PROVIDE A PERMANENT PLACEMENT FOR THE CHILD IS WILLING TO MAINTAIN APPROPRIATE CONTACT AFTER AN ADOPTION OF THE CHILD WITH THE CHILD'S RELATIVES, PARTICULARLY SIBLING RELATIVES, WHEN SUCH CONTACT IS SAFE, REASONABLE, AND APPROPRIATE;

(f) WHETHER A PERSON WHO COULD PROVIDE A PERMANENT PLACEMENT FOR THE CHILD IS AWARE OF THE CHILD'S CULTURE AND WILLING TO PROVIDE THE CHILD WITH POSITIVE TIES TO HIS OR HER CULTURE;

(g) THE CHILD'S MEDICAL, PHYSICAL, EMOTIONAL, OR OTHER SPECIFIC NEEDS, AND WHETHER A PERSON WHO COULD PROVIDE A PERMANENT PLACEMENT FOR THE CHILD IS ABLE TO MEET THE CHILD'S NEEDS; AND

(h) THE CHILD'S ATTACHMENT TO THE CHILD'S CAREGIVER AT THE TIME OF THE HEARING AND THE POSSIBLE EFFECTS ON THE CHILD'S EMOTIONAL WELL-BEING IF THE CHILD IS REMOVED FROM THE CAREGIVER'S HOME.

SECTION 5. Effective date - applicability. This act shall take effect July 1, 2005, and shall apply to actions filed on or after said date.

SECTION 6. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2005